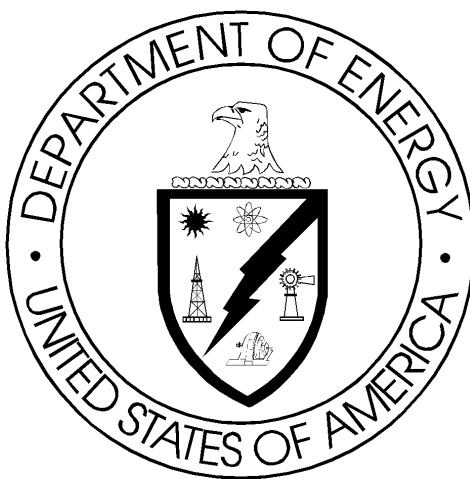


APPENDIX E

RESPONSES TO PUBLIC AND AGENCY COMMENTS

**Responses to Public and Agency Comments on
the Draft Environmental Assessment Addendum
and Mitigation Action Plan
for the Proposed Title Transfer of Parcel ED-1
(DOE/EA-1113-A)**



April 2003

**U.S. Department of Energy
Oak Ridge Operations
Oak Ridge, Tennessee**

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1. INTRODUCTION

On May 17, 2002, the U.S. Department of Energy (DOE) issued a draft Environmental Assessment (EA) Addendum and revised Mitigation Action Plan (MAP), which were prepared to meet the requirements of the National Environmental Policy Act (NEPA). This action was in response to a proposal submitted to DOE by the Community Reuse Organization of East Tennessee (CROET) in February 2002, requesting the title transfer of Parcel ED-1 (also known as the Horizon Center). Under the proposed action, CROET would continue to develop Parcel ED-1 as an industrial/business park. CROET has leased the parcel from DOE since 1996; the lease became effective in 1998.

The draft EA Addendum and revised MAP were released for comment on May 17, 2002. Originally the comment period was scheduled to end on May 31, 2002. However, DOE, at the request of one organization, granted a 15-day extension of the comment period to June 14, 2002. On May 28, 2002, DOE held a public information session.

Based on the comments received, DOE decided to proceed only with the transfer of the developable portions of Parcel ED-1 to CROET. The remaining portion of the parcel that contains the Natural Area will be retained by DOE and will remain under a lease between DOE and CROET. CROET will continue to be responsible for the monitoring and mitigation requirements described in DOE's MAP.

DOE received a supplement to CROET's proposal on August 19, 2002, requesting that the developable portion of Parcel ED-1 be transferred to the Horizon Center LLC, and likewise that the lease for the Natural Area be with Horizon Center LLC. Over the past 2 years, CROET has undertaken a reorganization resulting in a tiered, multi-company organizational structure. The 41-member CROET Board of Directors and the CROET President and Chief Executive Officer preside over the CROET Holding Company that serves as a parent or quasi-holding company for the "subsidiary" companies. Each of the subsidiary companies generally corresponds to one of the major operations or activities historically within CROET's charge. As an example, Heritage Center LLC is responsible for reindustrialization activities at the East Tennessee Technology Park (ETTP). In a like manner, Horizon Center LLC manages industrialization operations at the Horizon Center.

CROET has appointed a separate Board of Directors to oversee the operations of these companies, respectively. The reorganization provides advantages for the early and full identification of opportunities and for full capitalization on both known and emerging opportunities. In this regard, the key advantage to the restructuring lies in its ability to increase the overall efficiency of CROET operations.

There is a continuing relationship between the holding company and subsidiary companies in that CROET has a number of board positions on the subsidiary board of directors. Additionally, the subsidiaries may loan funds to each other to cover any temporary shortfall experienced by one of the others. It should be noted, however, that these subsidiary companies are structurally and legally separate.

To avoid confusion and for purposes of this document, the summary of comments presented in each subsection refer to CROET while the responses, where appropriate, refer to the Horizon Center LLC.

2. PUBLIC AND AGENCY COMMENTS

Comments were provided by the state of Tennessee, two State of Tennessee departments and two divisions, one state agency, three local environmental advisory boards, CROET, one economic council, three environmental organizations, and 12 individuals. The agencies, organizations, and individuals who offered comments on the draft EA Addendum and MAP included:

- Advocates for the Oak Ridge Reservation (AFORR),
- CROET,
- East Tennessee Economic Council (ETEC),
- Environmental Quality Advisory Board (EQAB),
- Oak Ridge Reservation (ORR) Local Oversight Committee (LOC),
- ORR Local Oversight Committee – Citizens’ Advisory Panel (CAP),
- State of Tennessee (TN)
- Tennessee Citizens for Wilderness Planning (TCWP),
- Tennessee Conservation League (TCL),
- Tennessee Department of Economic and Community Development (TN-DECD),
- Tennessee Department of Environment and Conservation - DOE Oversight Division (TDEC-DOE),
- TDEC Division of Natural Heritage (TDEC-DNH),
- Tennessee Wildlife Resources Agency (TWRA),
- U.S. Fish and Wildlife Service (FWS),
- David L. Coffey (Coffey),
- Douglas B. Janney, Jr. (Janney),
- Josh Johnson (Johnson),
- Joseph A. Lenhard (Lenhard),
- Robert Peelle (Peelle),
- L.O. Rabinowitz (Rabinowitz),
- William Schramm (Schramm),
- Lorene Sigal (Sigal),
- Ellen Smith (Smith),
- Edward Sonder (Sonder),
- Thomas L. Southard (Southard), and
- Warren Webb (Webb).

Original comments are provided as an attachment to this summary. Because many comments expressed similar concerns or raised similar issues, they were grouped into subject areas for the response summary. In all, there are 17 subject areas; they are presented in order based on the number of commentors for each area:

1. Transfer of the Natural Area;
2. MAP Requirements;
3. Transfer of Parcel ED-1 to CROET;
4. Effectiveness of Deed Restrictions;
5. Threatened and Endangered (T&E) Species;
6. Transfer of Development Area 4;
7. Oversight of CROET’s Activities;
8. Socioeconomics;
9. Utilities;
10. Cumulative Impacts;

11. Invasive/Exotic Species;
12. NEPA Process;
13. Land Use Planning;
14. Transfer of Parcel ED-1 to an Entity other than CROET;
15. Requirements Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
16. Editorial Comments; and
17. Cultural Resources.

Comments not specifically related to the EA Addendum, but rather directed at DOE policy or programs other than reindustrialization or other local and regional issues, are not included in this summary as they are beyond the scope of the EA. In addition, attachments supporting comment letters were used, where applicable, in the preparation of the final EA Addendum, but specific responses may not appear in this summary.

3. SUMMARY OF COMMENTS AND RESPONSES

The following sections of this report summarize the nature of comments received by DOE according to subject area. A summary of comments is provided and is followed by a list of the commentors and DOE's response. In some cases, a reference to revisions incorporated in the final EA Addendum or MAP is included. The reader may refer to Attachment A of this report to review the complete set of comments received.

3.1 TRANSFER OF THE NATURAL AREA

3.1.1 Summary of Comments

Several commentors expressed concerns regarding the transfer of the portion of Parcel ED-1, known as the Natural Area, to CROET and strongly recommended that DOE either retain ownership; establish a conservation easement to be held by another agency or organization (e.g., TWRA or the Nature Conservancy); or transfer the land to another conservation agency or organization. It was also suggested that the Natural Area could be transferred to the City of Oak Ridge, which could then accord it "greenbelt," or a less restrictive greenbelt status.

CROET offered a different perspective maintaining that they are capable of, and should maintain, protection of the Natural Area. They pointed out that having any other entity control the Natural Area would likely affect their ability to effectively market the developable lots and control events in the Natural Area.

Three commentors stated that they either did not have any objection to, or preferred, the transfer of only the developable portion of Parcel ED-1 to CROET. Reasons ranged from the ownership of the developable portion of the parcel would improve CROET's ability to market and develop the property; the ecological significance of the Natural Area and concerns about CROET providing for the area's long-term stewardship and ecological monitoring; and that the transfer of the developable portion of the parcel to CROET is acceptable, but not the most desirable option.

Some commentors were concerned that CROET's stated mission, to promote economic development for the region, is inconsistent with requirements for ecological monitoring and the protection of the Natural Area. They also felt that, to date, CROET has not fulfilled its ecological monitoring responsibilities on Parcel ED-1 and that there is no reason to believe that CROET will undertake the necessary degree of ecological monitoring of the Natural Area once it owns the entire parcel. Commentors also were concerned that if CROET should be disbanded that the responsibility for protection and monitoring of the Natural Area would be in limbo. Another commentor stated that once all developable sites are sold to private industries, CROET would then only own the infrastructure, roadways, and the Natural Area. With no further income from land sales, there would be no source of funds to continue the specified activities.

Commentors: AFORR, CROET, EQAB, LOC, CAP, TN, TCWP, TCL, TDEC-DNH, TWRA, FWS, Johnson, Peelle, Sonder, and Webb.

3.1.2 Response

Based on the comments received, DOE has revised the proposed action to include the transfer of only the developable portions of Parcel ED-1 to Horizon Center LLC. At this time, DOE will maintain ownership and control over the Natural Area and Horizon Center LLC will lease the area. Under the lease

agreement, Horizon Center LLC will continue to be responsible for meeting the requirements of the MAP. The ultimate disposal (if any) of the Natural Area will be determined at a later date.

3.2 MITIGATION ACTION PLAN REQUIREMENTS

3.2.1 Summary of Comments

Several comments were received regarding the requirements of the MAP. Some commentors seemed to believe that the requirements were too onerous, while others thought they were too ambiguous. As an example, one commentor thought that the physical inspections should only be required on an annual basis. In addition, two comments were received stating that the MAP could be interpreted as prohibiting all activity within the Natural Area while another interpreted that except for the sensitive areas, it should be made clear that there are no restrictions on crossings through the Natural Area, particularly for the purpose of developing necessary infrastructure extensions. It was also expressed that CROET, and not their clients, should be responsible for required monitoring. On the other hand, it was suggested that the MAP needs to specify who is responsible for oversight; clearly outline specific requirements for monitoring, review, and follow-up; and make the establishment of an advisory panel mandatory. A concern was expressed that CROET has not met the requirements of the MAP and it was suggested that a mechanism be established to ensure compliance with the MAP requirements. Concerns were also expressed that too much is left to the discretion, interpretation, and “good faith effort” of CROET.

There were a few comments received specific to the terminology “pre- and post-development monitoring.” It was believed that this terminology is misleading because of the current status of development on the parcel. One group suggested changing “post-development” monitoring standards to “pre-development” for those sites not already developed at Parcel ED-1.

Additional comments were received regarding other aspects of the MAP. For example, a commentor suggested that the coverage of the T&E species appears to be incomplete, and that there are omissions of formerly identified cultural resources on the map presented in the document. One commentor requested that the names and qualifications of the various individuals conducting the bird surveys be given. They also wanted to know how the analysis compares to trend analysis as described by the U.S. Geological Survey. It was also suggested that the data regarding corvids and nest parasites be presented and evaluated to determine if they could be affecting bird breeding in the area (e.g., increased nest predation). It was also suggested that the possibility of increased access of other nest predators, such as raccoons and skunks, be evaluated in the MAP.

Commentors: AFORR, CROET, CAP, EQAB, TCWP, TCL, TDEC-DOE, FWS, Lenhard, Rabinowitz, Sigal, and Webb.

3.2.2 Response

DOE convened a peer review of the existing MAP in March 2002. The Peer Review Team was comprised of biologists/ecologists and a NEPA Compliance Officer from DOE Headquarters. They recommended that the ecological data collected to date be reviewed and that revisions to the MAP be based on the results of the review. Many of the requirements, as well as the specificity in the revised MAP, are based on the Peer Review Team’s recommendations.

The required physical inspections, found in Sect. 3.1.1 of the MAP, are necessary to ensure that the Natural Area is not adversely impacted from activities on the developable portions of the property. The original MAP required quarterly inspections. However, after further evaluation the frequency was

changed to three times per year. This is so the inspections can occur: (1) prior to the primary construction period; (2) during the time of flowering, nesting, and spring migrations; and (3) following the prime construction period. The text of the MAP has been reviewed to make sure that it is clear that only Horizon Center LLC, and not their clients, are responsible for the required environmental monitoring.

Use of the Natural Area will be permitted as long as that use is non-intrusive and consistent with the natural environment (e.g., walking paths). If encroachment into the Natural Area is unavoidable, it will be done in accordance with the appropriate permit requirements and regulations, and the conditions specified in the lease between DOE and Horizon Center LLC. Construction of any and all habitable structures within the Natural Area will be prohibited. Encroachment into the sensitive areas where federal or state-listed species are known to occur will be prohibited.

DOE will be responsible for the oversight and accountability of Horizon Center LLC for meeting the requirements of the MAP because the Natural Area will not be transferred and will remain under DOE ownership. Horizon Center LLC, in accordance with the terms of the lease, will be responsible for the continuation of monitoring and inspections of the Natural Area, and will provide the collected data to DOE for use in publishing annual reports. The reports will continue to be made available to the public on an annual basis. At this time, DOE has decided not to create an advisory panel. Because the Natural Area will remain under DOE ownership, DOE will use in-house resources to ensure that Horizon Center LLC is meeting the terms of their lease.

The terms “pre-development” and “post-development,” used in the original MAP, are confusing and therefore, they will not continue to be used. These terms are mentioned in the revised MAP, in Sect. 2.1, where a summary is presented of the 1997 surveys that were conducted prior to any development on Parcel ED-1 (pre-development), and the ecological monitoring that has been completed since the construction of much of the infrastructure (post-development).

The MAP addresses listed T&E species known to be present within the Natural Area and that have the most potential to be adversely impacted. Monitoring of birds (including migratory species), amphibians, benthic macroinvertebrates, and fish will continue under the revised MAP. T&E plant species on Parcel ED-1 will continue to be monitored as part of the required inspections. Sections 3.2 and 4.2 of the EA Addendum have been revised to include additional information about migratory birds, including the Cerulean Warbler.

Although more cultural resources have been identified than what is indicated on the map in the document, the Tennessee Historical Commission has indicated that based on information provided to them about the proposed action, and in accordance with their previous review of the archaeological survey of the area of potential effect, the project area contains no archaeological resources eligible for listing in the National Register of Historic Places. DOE has submitted the proposed deed restrictions for review and comment. Correspondence from the Tennessee Historical Commission is contained in Appendix B of the EA Addendum.

3.3 TRANSFER OF PARCEL ED-1 TO CROET

3.3.1 Summary of Comments

Several commentors stated their support of the proposed transfer of the entire parcel to CROET. It was stated that the transfer should occur as quickly as possible and with as few restrictions as feasible. One group commented that they have always had a concern about the “desirability of leasehold interests to the private industrial market” and that average- to major-size industrial prospects are not interested in long-term leases when fee simple holdings are available. They also stated that CROET’s ownership of

Parcel ED-1 should vastly improve its marketing success. Another commentor recognized DOE's well-founded purpose in releasing property to mitigate downsizing, and through its reindustrialization, program make land available for new business and industry.

Commentors: CROET, ETEC, TN-DECD, Coffey, Janney, Lenhard, Rabinowitz, and Southard.

3.3.2 Response

DOE agrees that fee simple ownership should improve Horizon Center LLC's marketing success to help meet the goal of the proposed action to continue and further support economic development in the region. Based on other comments received, DOE has revised the proposed action to include the transfer of only the developable portions of the parcel to Horizon Center LLC. DOE will maintain ownership and control over the Natural Area and Horizon Center LLC will lease the area and be responsible for its protection.

3.4 EFFECTIVENESS OF DEED RESTRICTIONS

3.4.1 Summary of Comments

Several commentors expressed concerns regarding the effectiveness of deed restrictions that would limit CROET's development activities and protect the Natural Area. They stated that deed restrictions are difficult and costly to enforce; that only DOE would be legally entitled to assert violation of the deed restriction; and that redress typically is restricted to re-purchase of the land and buildings at current market value. One commentor suggested that since they did not believe that deed restrictions are an effective mechanism for permanent protection, DOE should consider establishing another mechanism. Suggestions were made that the landowner be required to post a bond to ensure their future performance, or that a reversion clause be inserted into the deed that would allow return of the land to DOE if CROET should no longer exist or not meet the requirements to protect the Natural Area. A request was made that copies of the draft transfer documents be made available for public review. Some believe that these agreements are part of the NEPA action and thus subject to public comment. Another commentor wanted to know if the deed restrictions would be included/transferred to new owners when CROET land was sold.

Commentors: AFORR, CAP, EQAB, TCWP, Peelle, Sigal, and Webb.

3.4.2 Response

DOE's decision to maintain ownership of the Natural Area should alleviate some of the concerns regarding its protection. Requirements will be placed in the appropriate documents to ensure that Horizon Center LLC monitors the Natural Area and performs mitigation if necessary. In addition, restrictions are included to ensure that development activities do not adversely impact the Natural Area. DOE has considered the effectiveness of various enforcement mechanisms, such as a reversion clause or the requirement for CROET to obtain a bond, and it was determined that each of these mechanisms have various flaws that cause them to either not be practical or effective. If Horizon Center LLC or any of its successors, transferees, or assigns fails to abide by the provisions of the Quitclaim Deed, then DOE will be able to seek enforcement in Federal District Court. The conditions specified in the Quitclaim Deed will flow to new owners.

The transfer documents will be made available to the public for information once DOE Headquarters approves the 10 *Code of Federal Regulations (CFR)* Part 770 package that will sit before the Congressional committees.

3.5 THREATENED AND ENDANGERED SPECIES

3.5.1 Summary of Comments

Several comments were received regarding T&E species, particularly the Cerulean Warbler and the Tennessee dace. Commentors requested that, based on provided information, DOE revise the EA Addendum and MAP to acknowledge the presence of the Cerulean Warbler on Parcel ED-1. It was also suggested that DOE analyze impacts to Cerulean Warblers and alter the EA Addendum accordingly.

Comments received regarding the Tennessee dace were varied and, in some cases, contradictory. For example, it was stated that the apparent impact on the population in Dace Branch from a 1999 storm event is of concern and that constant vigilance, as well as advancements in the prevention of construction projects, is needed. Conversely, it was also stated that the implication that construction activities on the site were the cause of the decline of the species in Dace Branch is speculation at best. They indicated that there has been a continued decline of the dace population over the years, indicating that there may be other causal factors involved. Regardless of the cause of the decline, it was agreed that continued monitoring is needed to further evaluate the condition of the population.

One commentor expressed a concern that the Biological Assessment (BA), prepared in 1995 to support the lease of Parcel ED-1 to CROET, was inadequate and inferred that it should be reviewed.

Commentors: AFORR, TCWP, TCL, TDEC-DOE, FWS, and Smith.

3.5.2 Response

As suggested, DOE has revised Sects. 3.2 and 4.2 in the EA Addendum to provide more information about migratory bird protection and the Cerulean Warbler in particular.

With respect to the Tennessee dace, DOE provided oversight during construction activities and is confident that CROET took the necessary actions to prevent adverse impacts to Dace Branch. Construction activities in the area of Dace Branch are complete and the area has been stabilized. Continued monitoring of Dace Branch was suggested by the MAP Peer Review Team and is included in the MAP. Horizon Center LLC is committed to maintaining “best management practices” in all future construction activities on Parcel ED-1. This often involves going beyond what is required by state and local requirements in order to ensure that adverse impacts are avoided if at all possible. It should be noted that other future activities beyond Horizon Center LLC’s control (e.g., Tennessee Department of Transportation expansion of State Route 95) could adversely impact Dace Branch.

DOE has reviewed the BA that was originally prepared in September 1995. At the time the BA was completed, the gray bat and Indiana bat were both federally listed as Endangered and the Virginia spiraea was listed as Threatened. DOE reviewed the current listings for all of the species previously identified by FWS as having the potential to occur on or within the vicinity of Parcel ED-1, and determined that only the gray bat, Indiana bat, and Virginia spiraea still have official listing status.

DOE has also reviewed the Annual Reports prepared from 1997 to 2000 as part of the implementation of the MAP for the original lease of Parcel ED-1. These reports were reviewed to determine if they contained any additional information pertaining to any federally listed species or their potential habitat that may have been discovered during any of the monitoring or development that has occurred on the parcel. This review did not indicate the presence of any new listed species or habitat that had not already been addressed in the 1995 BA or the EA prepared by DOE in 1996.

Also, not included in the 1995 BA was any discussion or information on a cave that is present on Parcel ED-1 near Herrell Road in the northwest part of the parcel. The opening of the cave is located within a road ditch and is approximately 1.5 ft high by 2 ft wide. Water from the ditch drains into the opening during wet periods of the year. To date, no surveys of the cave have been conducted to determine the size of the cave or if gray or Indiana bats are present or use the cave for roosting. However, DOE is assuming that bats may be utilizing the cave and have decided to protect the cave from disturbance by including it in the Natural Area.

3.6 TRANSFER OF DEVELOPMENT AREA 4

3.6.1 Summary of Comments

The commentors suggested that the EA Addendum address the adverse environmental impacts of developing Area 4 of Parcel ED-1. They also recommended that this area be excluded from development and added to the Natural Area because the area would be affected by constructing a bridge and/or undertaking road improvements to the existing gravel road to provide suitable access. It is believed that widening and paving the existing road would result in significant fragmentation by separating the Natural Area that runs along East Fork Poplar Creek (EFPC) from McKinney Ridge, which supports the breeding of a number of bird species of conservation concern. The question is raised of how the economic value of developing this area could possibly justify the environmental impact of these actions.

Commentors: AFORR, EQAB, TCWP, TCL, Sonder, and Webb.

3.6.2 Response

Development Area 4 is currently leased to CROET, consistent with the analysis performed in the 1996 EA. The results of the evaluation were the determination that approximately 55 acres, which included this area, was suitable for development. DOE has revised the EA Addendum to address potential adverse impacts to 1) the 1.5 mile section of the North Boundary Greenway that borders a portion of Development Area 4 and 2) migratory birds that could result from future development of this area. Based on the comment received, DOE would encourage the City of Oak Ridge and Horizon Center LLC to enter into discussions regarding the continued use of the greenway. In addition, mitigative measures should be enlisted as well as improvements that may enhance the public's use of the area (e.g., include a foot/bike path as part of the road improvements).

3.7 OVERSIGHT OF CROET'S ACTIVITIES

3.7.1 Summary of Comments

A few comments were received that pertained directly to CROET. Specifically, it was recommended that there be mandatory oversight/auditing of CROET or its subsidiary corporations by the city, DOE, or an independent entity. Commentors were also concerned with the financial aspects surrounding the sale of portions of Parcel ED-1 by CROET. Specifically, questions were raised regarding how the money would be distributed and to whom.

Commentors: AFORR, CAP, TCL, Johnson, Schramm, and Webb.

3.7.2 Response

CROET, including its subsidiaries, is the DOE-recognized, community reuse organization for Oak Ridge. Community reuse organizations were established and funded by DOE to implement community transition activities under Sect. 3161 of the National Defense Authorization Act for Fiscal Year 1993 [42 *U.S. Code (U.S.C.)* 7274 h]. CROET is also a 501(c)(3) entity, and as such is subject to oversight/auditing through a number of different mechanisms. As a public entity, CROET is required to file an annual tax return (Form 990) that is a matter of public record. In addition, CROET has annual audits conducted on their financial activities and provides that information to DOE and to the Federal Audit Clearinghouse. Also, DOE will be providing oversight of monitoring/mitigation since the Natural Area will remain under DOE ownership.

Horizon Center LLC has stated that money from the sale of portions of Parcel ED-1 will be used to fund additional infrastructure construction and improvements to the property, as well as improvements to facilities currently leased at ETPP.

3.8 SOCIOECONOMICS

3.8.1 Summary of Comments

Comments were received indicating that the consideration of economic impacts in the EA Addendum is inadequate because a number of significant economic issues received no attention or evaluation. One commentor stated that the EA Addendum needed to address the effectiveness of CROET's operations to date. Another commentor felt that an evaluation was needed to determine whether future development occurring on Parcel ED-1 would be more advantageous to the community (e.g., tax revenue) under the current leasing arrangement, CROET ownership, or ownership by some other entity. A commentor also wanted to know how much CROET expects to realize on the sale of the land available for development and what the city could expect in property and other taxes from development. A request was made that dollar estimates be provided at 2-, 5-, and 10-year intervals.

One commentor indicated that more recent data on city budgets is available and should, therefore, be used. It was also suggested that Table 5.1 of the EA Addendum presents unrealistic employment projections and that this should be corrected. Another commentor stated that Sect. 5.2.3 of the EA Addendum treats employment impacts in a cavalier manner and that the historical period used for comparison should be limited, because of the unrealistically large impacts from 1943-1950.

Commentors: CAP, Peelle, Schramm, Sigal, and Webb.

3.8.2 Response

It was determined that the bounding socioeconomic impact analysis conducted for the 1996 EA was still valid for the current proposed action. This determination is based on the estimate of direct and indirect jobs created and the minor demographic changes that have occurred. However, in response to the comments received, new information pertaining to local government revenues (i.e., property and sales tax) is provided in Sect. 5.2.3 of the EA Addendum. In addition, Table 3.2 has been revised and includes the current City of Oak Ridge budget information.

The evaluation in the EA Addendum is intended to assess the potential impacts from transferring Parcel ED-1 to Horizon Center LLC versus the potential impacts that were evaluated for the leasing action in the 1996 EA. For this reason, the economic effectiveness of CROET's and Horizon Center

LLC's operations is not within the scope of the EA Addendum. Under the current lease, the City of Oak Ridge can only tax improvements made by CROET or its subleases on Parcel ED-1. Since CROET is a not-for-profit organization, they cannot be taxed. Under the proposed transfer, Horizon Center LLC would be able to sell portions of the parcel to developers and the property and improvements by the new owners would be subject to property and sales taxes. This would indicate that the proposed transfer should be more advantageous to the community (e.g., tax revenue) than the current leasing arrangement.

Socioeconomic impacts are not only important in themselves, but also for the secondary positive and negative effects they may have on the community. The estimate of the number of jobs created represents the maximum potential impact on the local economy and, therefore, the most likely to generate adverse environmental effects. The purpose is not to forecast economic activity but to make sure that reasonably foreseeable, indirect effects are appropriately identified and considered.

3.9 UTILITIES

3.9.1 Summary of Comments

Comments were received requesting clarification on the discussion of utilities that is presented in the EA Addendum. A suggestion was made to differentiate actual utility upgrade commitments from intentions that are contingent on other actions. Another suggestion is to identify the initial water source for the parcel, and the expected availability of this source until long-term connections can be completed to the city system. One commentor wanted a discussion added regarding the expected future viability of the ETTP wastewater treatment plant, since the connection to the city plant may be delayed. Also, it was suggested that alternative plans for the future development of the site should be discussed since it is dependent upon the completion of the cities "looped" service, which may or may not be implemented. Another commentor wanted to know the anticipated costs (itemized) of additional infrastructure for development of the remainder of the developable portion of Parcel ED-1. It was also requested that the natural gas connection for the parcel be shown on a figure.

Commentors: AFORR, CAP, TDEC-DOE, Peelle, and Sigal.

3.9.2 Response

In response to the comments, DOE has provided additional information in Sect. 3.4 of the EA Addendum regarding planned utility upgrades that have the potential to affect Parcel ED-1. DOE has also updated, to the extent possible, the information regarding the current DOE and City of Oak Ridge utility infrastructure. The anticipated cost for infrastructure development of Parcel ED-1 is not within the scope of the EA Addendum, since DOE will not incur those costs. Also, because of security concerns, DOE has decided to not indicate certain utility routes in the EA Addendum.

3.10 CUMULATIVE IMPACTS

3.10.1 Summary of Comments

Several comments were received that were specific to the way that cumulative impacts are addressed in the EA Addendum or to the information that was used in the cumulative impacts section. As an example, one commentor suggested that the cumulative impacts of all the activities identified in Sect. 5.1 should be evaluated against the values and missions of the ORR and not just against the transfer of Parcel ED-1. Other commentors suggested that some of the activities presented in Sect. 5.1 should be updated.

Another commentor questioned the conclusion that there would be no cumulative adverse impacts to biodiversity as a result of the proposed transfer.

Commentors: CAP, TCWP, TCL, Peelle, and Webb.

3.10.2 Response

The NEPA regulations define cumulative impact as, “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions...” The cumulative impacts of developing Parcel ED-1 into an industrial/business park were evaluated in the 1996 EA. As stated previously, the EA Addendum has been developed to evaluate the transfer option, which was identified in the 1996 EA but not evaluated. For this reason, it is not appropriate to evaluate cumulative impacts on a broader scale than what is presented. Please note that certain cumulative impacts addressed in the 1996 EA are supplemented with additional information in the EA Addendum (i.e., land use, air quality, socioeconomics, transportation, and biodiversity). As suggested, updated information has been added to Sect. 5.1 of the EA Addendum, where applicable.

DOE has concluded that the impacts of the proposed action will not adversely impact the biodiversity of the region because it is reasonable to believe that large areas of the ORR will continue to be protected and not developed either by the private sector or as part of the DOE mission.

3.11 INVASIVE/EXOTIC SPECIES

3.11.1 Summary of Comments

Comments were received that were specific to the use of invasive species on Parcel ED-1. For example, it was suggested that CROET should not be held accountable for natural succession within the natural or sensitive areas and that CROET should only be held accountable for any invasive species it is responsible for directly introducing. One commentor stated that the prohibition on using non-native grasses for landscaping should be removed, while another stated that the language in Sect. 3.1.3 of the MAP needed to more thoroughly address native plants and minimizing lawn areas. Another suggested that DOE add a discussion of increased invasive species due to development to Sects. 4 and 5.2.5 in the EA Addendum.

Commentors: AFORR, CROET, CAP, TCWP, and Lenhard.

3.11.2 Response

Horizon Center LLC will only be held accountable for natural succession within the Natural Area with respect to preventing and controlling exotic/invasive plants in areas of known sensitive plant communities. Horizon Center LLC is also encouraged to continue its efforts to prevent the introduction of non-native species on the parcel and should be commended for their efforts to date. Especially important is the continuance of including the native plant recommendations and list of plant species to avoid in Horizon Center Covenants, Conditions, and Restrictions. Horizon Center LLC is not prohibited from using non-native grasses (i.e., fescue) for landscaping. DOE only suggests that lawn areas be kept to a minimum in order to control the spread of these species into adjacent areas of natural vegetation. Sections 4 and 5.2.5 in the EA Addendum have been revised to provide additional information regarding invasive and exotic species.

3.12 NEPA PROCESS

3.12.1 Summary of Comments

Several comments were received regarding the NEPA process, including the level of NEPA analysis, the selection of alternatives, and the subsequent analysis of alternatives. Commentors stated that the proposed transfer was a major federal action significantly affecting the human environment, thus requiring an Environmental Impact Statement (EIS). One commentor requested that DOE explain what a “Draft EA Addendum” is under the NEPA regulations. The request was also made that the names of the preparers of the documents be provided.

Alternatives that commentors thought should have been included and analyzed are: extending CROET’s lease for 99+ years, voiding the current lease after 10 years and then offering the parcel to all interested parties, ceding/selling a portion of the land to other entities, ceding/selling the parcel to the City of Oak Ridge, or returning the parcel to DOE management.

One commentor suggested that DOE should not rely on the 1996 EA to dismiss impacts but should evaluate unanticipated impacts that would be carried over under the proposed action, or its as yet unanalyzed alternatives. An example that was provided was that the 1996 EA and MAP did not evaluate impacts to the Natural Area, which may have occurred during the construction of the bridges, roads, and utility infrastructure.

Commentors: FWS, Peelle, Schramm, and Webb.

3.12.2 Response

After consultation with appropriate parties (e.g., coordination with DOE Headquarters), DOE has determined that the EA Addendum is the appropriate supplemental documentation for the proposed action to transfer Parcel ED-1 to Horizon Center LLC. This is because the action is primarily administrative in nature and involves going from a lease to ownership of the property. The EA Addendum updates information that was used in the 1996 EA and forms a link between that EA and the new proposed action of transfer. The transfer and the associated documentation will require the Secretary of Energy’s approval and will lie before the appropriate congressional defense committees before the transfer process can be finalized. DOE does not believe that an EIS is required because the proposed transfer is not a major federal action significantly affecting the human environment. As a result of the transfer, Horizon Center LLC will continue to develop portions of Parcel ED-1 as an industrial/business park. This action was evaluated in the 1996 EA that lead to a mitigated Finding of No Significant Impact and MAP.

Since this was an addendum to the existing 1996 EA, it was appropriate that only the proposed transfer be evaluated, as it was one of the alternatives dismissed from further consideration in the 1996 EA. DOE decided to analyze this alternative in the EA Addendum because of new information presented to them that transfer of ownership was necessary to meet the purpose and need of the original EA. Although only one alternative was evaluated, it included two options (see Sect. 2 of the EA Addendum), one of which DOE has decided to implement (i.e., transfer of only the developable portions of Parcel ED-1). The “new” no action alternative presented in the EA Addendum is the continuation of the proposed action evaluated in the 1996 EA (i.e., leasing). The DOE NEPA regulations (10 *CFR* 1021) do not require that a list of preparers be included for an EA. DOE believes that the qualifications of the contractor used for the preparation of these documents were adequate for the task, and they worked under the direction provided by DOE.

Termination of the lease to offer it to other parties is not an option. CROET, and its subsidiaries, is still the DOE-recognized community reuse organization for Oak Ridge. In accordance with the DOE-issued

interim final rule, “Transfer of Real Property at Defense Nuclear Facilities for Economic Development” (10 *CFR* Part 770), CROET submitted a proposal (Sects. 770.6 and 770.7), and later updated it, requesting transfer of Parcel ED-1 and DOE is acting on that request. Furthermore, DOE believes that the transfer of Parcel ED-1 to Horizon Center LLC will help to provide for the ultimate development of the parcel in order to meet the goal of continuing and furthering DOE support of economic development in the region.

3.13 LAND USE PLANNING

3.13.1 Summary of Comments

Commentors stated that the proposed transfer of Parcel ED-1 should be considered in context of the ORR as a whole, including DOE’s missions, long-term missions of other government agencies, DOE’s expectations for continued downsizing, the trend to transfer land piecemeal, and the impact of such on the value and integrity of the ORR natural areas and the reservation as a whole. Commentors were in favor of a comprehensive land use plan and assessment for the ORR that includes the entire reservation. One commentor recommended that DOE prepare a comprehensive plan for the reservation, which would protect lands in perpetuity for conservation purposes and make provisions for conservation research and national security projects. Another commentor stated that transfer of ORR lands for economic development is a permanent change in status for undeveloped land and that there is no equivalent protection for the undisturbed natural areas of the reservation.

Commentors: CAP, TCWP, TWRA, and Johnson.

3.13.2 Response

A review of the present and future programmatic needs for various land areas of the ORR was conducted as part of the original decision to lease Parcel ED-1. A summary of that review process is presented in the 1996 EA. The comments pertaining to land planning are outside of the scope of the EA Addendum, which is to evaluate the potential environmental impacts of transferring portions of Parcel ED-1 to Horizon Center LLC. The impacts of ORR land transfers, the value of the ORR, and ongoing DOE-Oak Ridge Operations missions and future mission requirements are being addressed as part of the ORR Land Use Planning Process currently being conducted by Oak Ridge National Laboratory. Although this land use planning effort is focused on the northwestern portion of the ORR, it also is taking into account the cumulative impacts that various land uses for this area could have on the remainder of the reservation.

3.14 TRANSFER OF PARCEL ED-1 TO AN ENTITY OTHER THAN CROET

3.14.1 Summary of Comments

Commentors suggested that Parcel ED-1 should be transferred to the City of Oak Ridge or made available to any interested public or private sector entity. A commentor suggested that the parcel should be transferred to the city with CROET managing Horizon Center LLC under its current lease. They did not believe that the city would reject a request by CROET to sell a portion of the parcel if an attractive industry wanted to locate in Parcel ED-1 and own, rather than sub-lease, its land. It was also stated that the city has made a substantial investment of taxpayer money and that by waiving its rights to the self-sufficiency parcel, is foregoing a substantial asset. A commentor further stated that if transfer to a single entity is to be considered, a lack of interest by other parties should be clearly documented and that the documentation would go well beyond recording the Oak Ridge City Council’s waiver of interest.

Commentors: CAP, Johnson, and Schramm.

3.14.2 Response

In accordance with the DOE-issued interim final rule, “Transfer of Real Property at Defense Nuclear Facilities for Economic Development” (10 *CFR* Part 770), CROET submitted a proposal (Sects. 770.6 and 770.7), and later updated it, requesting transfer of Parcel ED-1. CROET, and its subsidiaries, is the DOE-recognized, community reuse organization for Oak Ridge. [Community reuse organizations were established and funded by DOE to implement community transition activities under Sect. 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 *U.S.C.* 7274 h)]. On May 6, 2002, the city waived its self-sufficiency rights. DOE received no other requests from any other interested parties or entities, and therefore is proceeding with evaluating the transfer to Horizon Center LLC.

3.15 REQUIREMENTS UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

3.15.1 Summary of Comments

A few comments received were specific to the listing of the ORR, including Parcel ED-1, on the National Priorities List (NPL) and the requirements under CERCLA that must be met. A commentor noted that since no CERCLA decision has been made concerning the Lower EFPC surface water and sediments, the EA Addendum should address DOE’s plans to insure appropriate activities are completed in accordance with Sect. 120(h) of CERCLA. One commentor stated that indemnification of the development areas should flow with the property and that the property should be de-listed from the NPL.

Commentors: CROET, TN, and TDEC-DOE.

3.15.2 Response

In a letter dated August 21, 1995, and again on August 21, 2001, the U.S. Environmental Protection Agency (EPA) concurred with DOE’s determination that Parcel ED-1 is not contaminated, with the exception of EFPC and Bear Creek and their associated floodplains (see Appendix K in the 1996 EA and Appendix D in the EA Addendum). Because DOE has decided to maintain ownership of the Natural Area, which includes EFPC and its floodplain, the only areas that will be transferred have already received a “clean parcel determination” under CERCLA Sect. 120(h)(4).

Initially DOE determined that indemnification would only be provided to Horizon Center LLC and that it would not be extended to its successors, transferees, or assigns. However, in February 2003, an amendment was passed as part of the FY 2003 Omnibus Appropriations (P.L. 108-7) that allows for extending indemnification to Horizon Center LLC’s successors, transferees, or assigns. Therefore, the Quitclaim deed has been revised to allow for indemnification to run with the land. The decision to de-list Parcel ED-1 from the NPL is an EPA decision.

3.16 EDITORIAL COMMENTS

3.16.1 Summary of Comments

Commentors noted editorial errors and pointed out areas where clarification was needed.

Commentors: AFORR and CAP.

3.16.2 Response

The final EA Addendum and MAP have been reviewed for editorial errors, and corrections have been made as appropriate.

3.17 CULTURAL RESOURCES

3.17.1 Summary of Comments

A commentor suggested that DOE be more specific on how to implement the physical inspections described in Sect. 4.2 of the EA Addendum.

Commentors: TDEC-DOE.

3.17.2 Response

DOE has revised Sect. 4.2 of the EA Addendum to include more details on the inspections. This information is also provided in Sect. 3.2 of the MAP.